

PARLIAMENTARY INQUIRY INTO A BETTER FAMILY LAW SYSTEM TO SUPPORT AND PROTECT THOSE AFFECTED BY FAMILY VIOLENCE

Submission from

**baptist care
australia**

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WHO WE ARE

Baptist Care Australia is a Christian association of Baptist organisations around Australia. Our members bring life-enriching care to their clients, residents, families and communities. We contribute substantially to the economic, physical and spiritual well-being of Australian communities. Our members have an annual turnover of around \$700 million, employ around 9,000 staff, and engage with more than 2,500 volunteers annually. Each year, our services touch the lives of more than 190,000 Australians.

We work with people affected by family violence to help them heal and rebuild their lives. Services include individual and group counselling for survivors, perpetrators, and for children. Early intervention programs target young men affected by violence who are starting to show signs of violent behaviour towards their families. We provide crisis and medium-term accommodation for women and children escaping violence, and a range of education and support programs tailored to their needs. Women leaving violent situations can access a no-interest loan scheme to buy household items.

Our policy on domestic and family violence envisions “A society free of violence against women and their children; where conflict is addressed without violence and women are not only safe, but respected, valued and participate as equals in private and public life.”

Members of Baptist Care Australia are:

- [BaptistCare](#) (NSW & ACT)
- [Baptcare](#) (VIC & TAS)
- [Carinity](#) (QLD)
- [Baptist Care](#) (SA)
- [Baptistcare](#) (WA)
- [Baptist Care NT](#)
- [Ashfield Baptist Homes](#)
- [Village Baxter](#)
- [Maroba](#)
- [Bethshan Ministries](#).

Baptist Care Australia would welcome an opportunity to present at a public hearing of the inquiry to speak about our insights from the frontline of providing services to people affected by family violence.

SUMMARY AND RECOMMENDATIONS

There is an urgent need for reform across the family law system to protect the interests of women. The level of understanding of family violence by family law professionals needs to be improved, and measures put in place to protect women and children from being further victimised by the former partner.

Baptist Care Australia supports the model for reform of the family law system proposed by Women’s Legal Services Australia, [Safety first in family law](#).¹

¹ Women’s Legal Services Australia (2016) *Safety First in Family Law. Five steps to creating a family law system that keeps women and children safe*. Available:

http://www.womenslegal.org.au/files/file/SAFETY%20FIRST%20POLICY%20PLATFORM.MAY%202016_FINAL.pdf

Recommendations

- 1) Adopt a national framework across the family law system of core definitions in relation to family violence, providing a shared language with legal and non-legal support services.
- 2) Provide resources to coordinate the range of legal and non-legal support services required to effectively support victims and hold perpetrators to account. Monitor the delivery of these services and measure their effectiveness.
- 3) As recommended in *Safety First in Family Law*, remove the language of “equal shared time” and “equal shared parental responsibility” in the Family Law Act 1975 to shift culture and practice towards a greater focus on safety and risk to children.
- 4) Fast track family court processes where risk screening indicates that family violence is present.
- 5) Develop alternative arrangements for giving evidence to improve protection for victims, including the use of screens, pre-recorded evidence and video testimony.
- 6) Investigate the wider applicability of the Victorian model of a family violence division within family law courts.
- 7) Improve the communication and coordination between Federal and State court systems in relation to family violence matters.
- 8) Regularly review the Family Law Act to include special considerations relating to family violence, including controlling and coercive behaviour.
- 9) Improve the training of family law professionals in family violence, and consider how specialists could be used to handle the complexities of cases involving family violence.

TOR 1 – EARLY IDENTIFICATION

The NSW Domestic Violence Safety Assessment Tool Guide² (DVSAT) provides a standardised set of 25 questions that provide recognised risk indicators. DVSAT and other equivalent tools consistently and accurately identify the level of threat to domestic violence victims. It combines a risk identification checklist and the professional judgement of the person engaging with the victim. There is merit in using a standardised tool within the family court that is already in use by service providers and the police.

Although training for court officers, legal representatives and judges helps to increase their awareness and understanding, identifying indicators of threat needs a professional with a higher level of training to be embedded in the family court.

Primary prevention and early intervention are crucial in reducing the incidence and impact of family violence. The most effective interventions involve monitoring of high-risk perpetrators and accountability for early use of violence.

For these reasons, Baptist Care Australia supports Recommendations 1a and 1b from *Safety First in Family Law*¹:

- 1 a) Place domestic violence specialists in family court registries to undertake risk assessment at the very earliest stages of a case and provide recommendations on interim care arrangements for children.
- 1 b) Create a process in family courts to manage domestic violence cases with an emphasis on early decision making, triaging and case-management.

The use of a standardised risk identification tool within the family courts, such as the NSW Domestic Violence Assessment Tool (DVSAT)², would provide a validated mechanism to identify safety threats related to family violence. The NSW DVSAT Guide notes that “it is common for the level of threat to fluctuate or escalate rapidly in domestic violence situations”(p.7). The Guide describes circumstances in which it may be appropriate to complete a new DVSAT with a victim and these include the commencement of family court matters.

Women’s Domestic Violence Court Advocacy Services (WDVCAS), working in concert with other non-legal support services, provide a vital support to victims of family violence.

Baptist Care Australia supports the recent decision taken by the Federal Government to reverse proposed cuts to Community Legal Centres and is encouraged by the additional support such funding will provide to women and children impacted by family violence. Professional representation through adequately-funded legal aid is vital because the family law courts have no power to investigate family violence matters, and a high volume of unrepresented litigants appear before the court system. Victims suffering family violence need to be given assistance in gathering evidence, including safely storing text messages, e-mails, voicemail and social media posts.

There needs to be an increased focus within the family law system on groups with special needs in relation to family violence, including culturally and linguistically diverse communities, Aboriginal and Torres Strait Islander communities and people living with disabilities. These groups need targeted support, both legal and non-legal, in addressing family violence.

Recommendations:

- 1) Adopt a national framework across the family law system of core definitions in relation to family violence, providing a shared language with legal and non-legal support services.
- 2) Provide resources to coordinate the range of legal and non-legal support services required to effectively support victims and hold perpetrators to account. Monitor the delivery of these services and measure their effectiveness.

TOR 2 – CONSENT ORDERS

Baptist Care Australia clients tell us repeatedly that the safety of women and children is under threat in relation to consent orders. There seems to be little recognition that family violence is traumatic for the whole family including children who have witnessed it.

Amy’s story in Appendix A is just one example of how traumatised children are not properly protected when parental access by the perpetrator is being considered. Amy is a Baptist Care client.

The safety of women and children impacted by family violence needs to supersede a presumption of equal parenting when the family court is determining consent orders.

Recommendation:

- 3) As recommended in *Safety First in Family Law*, remove the language of “equal shared time” and “equal shared parental responsibility” in the Family Law Act 1975 to shift culture and practice towards a greater focus on safety and risk to children.

² NSW Government (2015), *Domestic Violence Safety Assessment Tool*. Available: http://www.domesticviolence.nsw.gov.au/_data/assets/file/0020/301178/DVSAT.pdf

TOR 3 – SELF REPRESENTATION

Sarah is a Baptist Care client and her story in Appendix B demonstrates some of the difficulties experienced in accessing appropriate legal representation.

Family violence matters span the jurisdictions of a number of courts: magistrate courts deal with Domestic Violence Orders (DVOs), supreme courts deal with breaches of DVOs and family courts deal with custody and property settlement matters.

This specialisation can result in a “silo effect” with a lack of coordination of information, including awareness of changes in threat levels experienced by victims. This can result in re-traumatisation for victims of family violence, who are required to navigate a complex system and re-tell their story of trauma. This is exacerbated by the involvement of multiple magistrates in many cases. The creation in Victoria of a family violence division within the family law court, bringing the various jurisdictions together, provides a model which warrants consideration for other States.

Recommendations:

- 4) Fast track family court processes where risk screening indicates that family violence is present.
- 5) Develop alternative arrangements for giving evidence to improve protection for victims, including the use of screens, pre-recorded evidence and video testimony.
- 6) Investigate the wider applicability of the Victorian model of a family violence division within the family law court.
- 7) Improve the communication and coordination between Federal and State court systems in relation to family violence matters.

TOR 4 – FINANCIAL RECOVERY AND PROPERTY DIVISION

Appendix B is from a Baptist Care client, Sarah. It outlines just one case where financial abuse has been used to continue to traumatise and control victims through the family law system.

Family violence often includes financial abuse as a control measure. This reduces the financial resources available to victims, including their capacity to access legal representation during family law court proceedings. Many victims take on loans to access legal representation, which adds to the impact of existing financial abuse and extends their journey to financial recovery.

Patterns of power and control can persist through family law court proceedings, with perpetrators continuing to behave in ways that reduce choice for the victim and perpetuate financial abuse. Property division orders need to take into account the likelihood of financial abuse and to properly assess resources and debt levels.

TOR 5 – FAMILY LAW PROFESSIONALS

Baptist Care Australia supports regular reviews of the Family Law Act, and the inclusion of notions of controlling and coercive behaviour in the description of family violence.

The level of understanding of family violence held by family law professionals needs to be improved, with respect to the various forms of violence, patterns of coercion and control, the influence of gender and the impact on victims, particularly women and children.

With increased understanding of the nature of family violence, judicial officers will be better equipped to respond to family violence matters with greater objectivity. Given the wide range of complex matters addressed by the family court, there is an opportunity to provide deeper levels of training for specially appointed judges and registrars.

The workload of family law judges needs to be reassessed, noting that at any one time a judge can have at least 300 matters on their family law docket and this can increase at times to as many as 700 matters.

Recommendations:

- 8) Regularly review the Family Law Act to include special considerations relating to family violence, including controlling and coercive behaviour.
- 9) Improve the training of family law professionals in family violence, and consider how specialists could be used to handle the complexities of cases involving family violence.

TOR 6 – INTERVENTION ORDERS

Baptist Care Australia strongly supports the need for a national approach to intervention orders for personal protection. This national approach must extend to the monitoring of compliance and enforcement of intervention orders.

APPENDIX A – AMY’S STORY

My name is Amy and I’m writing to you today to talk about my experience with family court following the domestic violence we lived through from the father of my children. Writing about our experience is difficult however as a mother anything I can do to help change these processes for other families in the same situation is something I will do. By helping you to understand my story I hope to explain to you how difficult it is managing so many safety risks for both my children and I when domestic violence is not understood by the family court system.

During the course of our relationship my husband used various forms of violence towards both me and then the children which escalated over time. There was once a time in the early years of our relationship where I would never have thought that my family’s physical safety would never be a concern from the man I had married. When my husband insisted it was time we start a family I was resistant however he quickly convinced me that this is what a normal husband expects.

When I became pregnant with our first child things at home became more difficult. My husband disapproved of much of my family and friends so I had little in the way of support from anyone other than him. My husband insisted that this was how people having children from strong bonds together and that we didn’t need anyone else in our lives to help me out with the new baby. It was during this time that my husband began to insist he knew where I was and what I was doing at all times, assuring me that this was for the safety of our unborn child. It was not too many months into the pregnancy when my husband would call my workplace to check I was there, show up at my work causing problems with many of my colleagues. Eventually with much persistence my husband insisted it was easier for me not to work. As his controlling behaviour continued I began to worry about the security of our soon to be family.

It was not until after our son was born that the aspect of physical violence entered our relationship. The first time my husband beat and threatened me I left our home and vowed never to return. Shortly after I left however I realised that I had nowhere to go because I was now so isolated from the loved ones who had supported me. Following much begging from my husband and the promise of change I felt like I had no other option but to return to him, after all I listened to my husband when he said he had a right to his child. After a time my husband told me he wanted another child and so began the pressure to again fall pregnant with little consent from me. This cycle of violence we had now started continued many times, with each time gradually escalating to a point where I could no longer even see how our relationship had become this. With each child we had I was left more and more isolated and dependant on the man which had now changed from my beloved husband, to the abusive perpetrator of violence now named on my domestic violence orders.

Once my children started school my husband insisted they pull their weight at home, this particularly escalated once our eldest children entered their early teens. My husband had been through many jobs and began to blame our family for any problems. With my husband’s monopoly on our finances, we quickly went into debt. He could not justify spending money on clothes for the children but would enrol in things resembling pyramid schemes to make money, losing our family thousands. He began to get physical with the children, resulting in me having to call the police multiple times. It was after the police left that that I would have to pay the price for getting them involved. His physical violence knew no bounds, with in many instances of us being tied up, whipped, beaten, bleeding and or even knocked unconscious. My husband would use fear to control us all, killing family pets in front of us all as a warning. He voiced many threats and made sure none of us would question if he was willing to follow through. Upon the police coming one too many times they put domestic violence orders upon my husband. It was after the police left following this that he strangled me until I was unconscious while threatening to kill himself, me and our children.

Even though I feared for my life I was forced to call the police again following an incident where my eldest two sons were quite seriously assaulted by their father. There was nothing I could do but call

the police for fear someone would end up dead. Police came and my husband was charged with breaching the domestic violence orders as well as the abuse towards the children. It was then that my children and I went into refuge.

Following refuge and then rehousing, my children and I had a stable home and safety measures in place, lest my now ex-husband ever find us. It felt like as soon as our housing was stable enough for us to consider it a home, my husband began to search for us through all family and friends we had re-connected with. He claimed he wanted to be a father to his children and that this was his right.

He started the family law proceedings, writing affidavits stating he was a seemingly perfect father that had only tried his best. He conceded that he had used some violence towards the older children but now he had sought help he should still deserve to have joint custody of at least our youngest child who was now 4.5 years old. At this stage my children were so terrified of their father they were coming to sleep in my bed all together nearly nightly. I had us all in counselling to work through what had happened to us all but we needed time to even start to heal. This news absolutely terrified them and what was worse was that I had no power to stop this possibly happening.

Throughout the court process was various court appearances and interviews which caused many sleepless nights for all of us. My children and I were terrified for our safety, because now my ex-husband knew where we all lived there was every chance he would come back and finish the threats he started.

As family court and mediation began to progress it became apparent that in the eyes of family court even though my ex-husband had caused unrepairable damage to our family there was nothing in those domestic violence orders to stop him continuing this with our children. It shocked me when I was told that it is a very long and expensive process during which we had to prove that just because he had extensively traumatised the older children and myself, the younger children were also affected. That having contact with these children was not only terrifyingly dangerous for them physically, but also continued to trigger the older children who no longer were forced to have this contact because they are old enough to give their own opinion. We continued to go to mediation and there were many subpoenas for notes from counsellors, police, emergency services and community organisations.

Currently we are awaiting a verdict, something which has the power to determine the future of my children's lives. My lawyer tells me that we are lucky and that this judge has previously had more understanding in domestic violence cases than other judges they work with. The fact that domestic violence is not understood and responded to in family court when this has the power to so greatly affect the safety of my children shocks me beyond words. I find myself thing that if he power to keep my children safe from harm is once again not something I can promise to guarantee, how will we ever be safe enough to begin to heal.

Until family court processes can begin to understand and respond to domestic violence, both our family many others will continue to face the same petrifying possibility that protecting our children and equitable contact for parents are two separate and conflicting things. I continue to try and assure my children that our horror story is over but in reality until these changes are made, it is possible for them that it has still only just begun.

APPENDIX B – SARAH'S STORY

My name is Sarah and I am writing you about my family's experience with domestic violence. I have three children. My sons are 9 and 12 and my daughter is 6 years old. I left my husband when he started hitting my oldest son and hurting our pet dogs. For years I put up with the yelling, name calling, hitting and put downs, but I couldn't let the same thing happen to my children. I left home when my daughter was 2 and my husband was in Cairns for work. I had very little money and went to live with a friend for a few months. Eventually, I was able to rent a small two bedroom unit for myself and my children. I work a casual job and try to save as much money as I can.

Last year my ex-partner took me to family court, after two years of not hearing from him at all. My children were scared to see their father alone and often woke up in the middle of the night from nightmares. I tried to access Legal Aid, but I made too much money and I did not qualify for the program. I did not have much experience with lawyers and had no idea where to go. During this time my ex-partner's lawyer kept sending me letters to try to agree to his contact demands. I felt a lot of pressure to respond, but I didn't want to agree to something that would be bad for my kids.

I went to a lawyer and it cost about \$300 an hour. Often my ex-partner would say he was not prepared and court would be put off for days and weeks. The process seemed to drag on and ultimately took over two years for the entire process to play out. When we lived together, he was in charge of all the money and I had no access to our savings account and he took all of our money out of the bank once he realised I left. In order to get through court I had to borrow money from friends, sell most of my belongings, borrow money from my family, work extra hours and we could not afford Christmas presents this year. The kids were understanding and we all went to a movie for Christmas, but I felt guilty that I could not give them presents. It was our first chance to have a normal Christmas like other families, but we were not able to have that.

Now that court has finished, I am in a lot of debt and he still does not show up to contact when he says he will. The entire time I felt like I was back in a relationship with him and in that domestic violence. I felt like I had no control over the situation and he was using court to control me. I felt like he was using court to make sure I didn't have enough money to start a new life. Even though I wasn't living with him anymore, it felt like he was still controlling us. I am still getting back on my feet from the last year in family court and I hope to have enough money later in the year to go on a holiday with my kids.

I think my ex-partner used court and needlessly dragged the process out in order to further control my finances. I never felt free of his control and I felt like I did when he controlled all the money in the house. I never felt fully free and felt that I still had to answer to him. I hope that people understand how people who use domestic violence can use family court to keep control of the family. I hope no more women need to experience this in the future. Thank you.